NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Wintz Freightways, Inc. and District Lodge 34, Local Lodge 804, of the International Association of Machinists and Aerospace Workers, AFL-CIO. Case 9-CA-33761

February 6, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

Upon a charge and amended charge filed by the Union on March 25 and September 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 3, 1996, against Wintz Freightways, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On January 13, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On January 14, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated December 9 and 12, 1996, notified the Respondent that unless an answer were received by December 19, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the business of transporting freight from its Cincinnati, Ohio facility. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, derived gross revenues in excess of \$50,000 for the transportation of freight from points within the State of Ohio directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All mechanics employed by the Respondent at its Cincinnati, Ohio facility, excluding all professional employees, office clerical employees and all guards and supervisors as defined in the Act.

Since about 1990 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 6, 1995, through May 6, 1999. At all times since 1990 and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 25, 1995, the Respondent has been failing to continue in effect all the terms and conditions of the 1995-1999 agreement by failing to make payments to the Health and Welfare Fund and to pay the medical expenses of the unit employees, and by failing to make payments to the pension fund. Since about February 5, 1996, the Respondent has also been failing to process employee grievances arising from the failure to pay into the Health and Welfare Fund. In addition, since about February 15, 1996, the Respondent has failed to remit to the Union dues deducted from employees' pay pursuant to the contractual dues-checkoff clause. Finally, since about May 3, 1996, the Respondent has failed to pay employees' wages and accrued vacation pay. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about September 25, 1995, to continue in effect all the terms and conditions of the 1995-1999 collective-bargaining agreement by failing to make contractually required contributions to the Health and Welfare Fund and the pension fund and to pay the medical expenses of the unit employees, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions and/or expense payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).1

In addition, having found that the Respondent has been failing, since about February 5, 1996, to process employee grievances arising from the failure to pay into the Health and Welfare Fund, we shall order the Respondent to process grievances as required by the terms of the collective-bargaining agreement.

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about February 15, 1996, to remit to the Union dues deducted from employees' pay pursuant to the contractual dues-checkoff clause, we shall order the Respondent to remit such withheld dues as required by the

agreement, with interest as prescribed in New Horizons for the Retarded, supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to pay wages and accrued vacation pay to the unit employees since about May 3, 1996, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Wintz Freightways, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement with District Lodge 34, Local Lodge 804, of the International Association of Machinist and Aerospace Workers, AFL–CIO, effective from May 6, 1995, through May 6, 1999, by failing to make payments to the Health and Welfare Fund or pension fund or failing to pay the medical expenses for the following unit employees:

All mechanics employed by the Respondent at its Cincinnati, Ohio facility, excluding all professional employees, office clerical employees and all guards and supervisors as defined in the Act.

- (b) Failing to process employee grievances arising from the failure to pay into the Health and Welfare Fund.
- (c) Failing to remit to the Union dues deducted from unit employees' pay pursuant to the contractual duescheckoff clause.
- (d) Failing to pay employees' wages and accrued vacation pay.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Comply with the terms and conditions of the 1995–1999 collective-bargaining agreement by making all contractually required contributions to the Health and Welfare Fund and the pension fund and paying the medical expenses of the unit employees, and make the unit employees whole for any loss of benefits or expenses ensuing from its failure to do so since September 25, 1996, in the manner set forth in the remedy section of this decision.
- (b) Process grievances as required by the collectivebargaining agreement.
- (c) Remit to the Union any withheld dues that have not been remitted since about February 15, 1996, plus

¹To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

interest computed in the manner set forth in the remedy section of this decision.

- (d) Make the unit employees whole, with interest, for any loss of earnings attributable to its failure to pay unit employees wages and accrued vacation pay since about May 3, 1996, in the manner set forth in the remedy section of this decision.
- (e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facility in Cincinnati, Ohio, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 25, 1996.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 6, 1997

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement with District Lodge 34, Local Lodge 804, of the International Association of Machinist and Aerospace Workers, AFL–CIO, effective from May 6, 1995, through May 6, 1999, by failing to make payments to the Health and Welfare Fund or pension fund or failing to pay the medical expenses for the following unit employees:

All mechanics employed by us at our Cincinnati, Ohio facility, excluding all professional employees, office clerical employees and all guards and supervisors as defined in the Act.

WE WILL NOT fail to process employee grievances arising from the failure to pay into the Health and Welfare Fund.

WE WILL NOT fail to remit to the Union dues deducted from unit employees' pay pursuant to the contractual dues-checkoff clause.

WE WILL NOT fail to pay employees' wages and accrued vacation pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the 1995–1999 collective-bargaining agreement by making all contractually required contributions to the Health and Welfare Fund and the pension fund and paying the medical expenses for the unit employees, and WE WILL make the unit employees whole for any loss of benefits or expenses ensuing from our failure to do so since September 25, 1996, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL process grievances as required by the collective-bargaining agreement.

WE WILL remit to the Union any withheld dues that have not been remitted since about February 15, 1996, plus interest.

WE WILL make the unit employees whole, with interest, for any loss of earnings attributable to our failure to pay unit employees wages and accrued vacation pay since about May 3, 1996, in the manner set forth in a decision of the National Labor Relations Board.

WINTZ FREIGHTWAYS, INC.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."